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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No.

In the Matter of
GEORGE D. TEMPLETON
on behalf of
GEORGE D. TEMPLETON, JR.,
for a Writ of Habeas Corpus.

BRIEF IN REPLY TO MOTION TO DISMISS.

FACTS.

The facts of this case as alleged in appellant's "Petition for a Writ of Habeas Corpus" (Unprinted Record, p. 63 et seq.), have not been controverted by respondent. Respondent's statement of "facts" (Unprinted Record, pp. 112-113) are only partial. The facts of record disclose that appellant raised the constitutional points involved here.

1st. Upon his arraignment. (Unprinted Record, p. 63, 2-b Appendix.)

2nd. Upon his offer of evidence of mental condition during the trial on the plea of "not guilty". (Unprinted Record, p. 64.)

3rd. At the beginning of the trial upon the issue of "Not Guilty by Reason of Insanity". (Unprinted Record, p. 68.)

The foregoing may or may not be important. It suffices to show conclusively that at every opportunity appellant demanded his constitutional right to a trial by due process and never waived it.

THE ISSUES.

Respondent has not stated fairly appellant's contention in these proceedings. He says: "In other words, appellant demands a right to introduce in the evidence circumstances which are immaterial and irrelevant and in no way touch upon his guilt or innocence." (Unprinted Record, p. 115.)

That respondent has completely missed appellant's contention is apparent. We have shown it clearly and argued it thoroughly in our jurisdictional statement. (Unprinted Record, pp. 11-15.)

The point, briefly, is that the Sections 1016, 1020 and 1026 of the California Penal Code, together, which are claimed by the California Supreme Court to be merely procedural, in effect repeal Section 20 (substantive law) which provides that in "every crime there must exist a union, or joint operation of act and intent" and Section 21 which provides

that this intent is manifested, "by the circumstances connected with the offense, *and the sound mind and discretion* of the accused".

Sections 1016, 1020, 1026 also alter the requirements of Sections 187 and 188 of the Penal Code which define the crime of murder and require the existence of an express or implied *malice* as an essential ingredient of the crime. Implied malice may be manifested by a showing that the accused was possessed of and animated by "an abandoned and malignant heart". This is a mental condition. It must be proven by facts beyond a reasonable doubt.

These requirements are substantive law. The essentials of the crime—nothing procedural at all. The right to present evidence in mitigation is assumed by Section 1105, Penal Code.

This right is taken away by Sections 1016, 1020 and 1026 since the *only* evidence permitted by them is evidence of a complete insanity sufficient for a complete defense, i.e., a showing that the accused did not know the difference between right and wrong with relation to the act. In other words, that he was either a maniac or a hopeless idiot.

Anything in between, a weakened mentality, a misguided motive, any one of a dozen similar reasons affecting mental condition and the presence of an abandoned and malignant heart, may not be proven on the trial under the "not guilty" plea. The jury can have nothing on which to exercise its discretion towards mitigation. Under the plea of "not guilty

by reason of insanity", the accused being already either condemned to death or life imprisonment (in first degree murder trials) such evidence is valueless even though clearly sufficient to prove a mitigating condition, because insufficient as a complete defense of insanity as defined by the California courts, which require a showing that the accused was either a maniac or hopeless idiot, i.e., one who didn't know the difference between right and wrong with relation to the act.

It is obvious that the sections complained of are not merely procedural but change and interfere with substantive rights of the greatest importance.

This is well expressed in the language of Justice Houser in his dissenting opinion in the case of *People v. French*, 12 C. (2d) 720. He said (p. 777):

> "The materiality of all evidence that bore either directly or indirectly upon his state of mind at the time when the offense was committed should be most apparent."

He cited Section 195 of the Penal Code of California, the pertinent part of which reads as follows:

> "Homicide is excusable in the following cases:
> * * * * * * *
> 2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner."

He further said:

> "For aught that may be indicated therein, 'heat of passion' may be engendered by any untoward act on the part of the person whose life is subsequently taken by the accused." (p. 777.)

Justice Houser's view is supported by this court in the case that he cites, to wit: *Stevenson v. U. S.*, 162 U. S. 313, 16 S. Ct. 839, 40 L. ed. 980.

This court has not held, notwithstanding the contrary assertion by respondent, that the "penal code sections under consideration and the issues raised by appellant herein (Unprinted Record, p. 115) * * * (do) not * * * present a substantial federal question".

Respondent's assertion is made on the authority of *People v. Troche*, 280 U. S. 524. It is unnecessary to cite authority here for the proposition that a denial of a petition for certiorari or refusal to review on appeal, is not an affirmance of the decision review of which is sought.

The reading of the jurisdictional statement filed in *People v. Troche* (280 U. S. 524), is sufficient to enable one to understand why this court refused to review the case.

The case of *Shulthis v. McDougal*, 225 U. S. 561, cited by this court in its order of dismissal is not pertinent here; there is nothing in the cases of *Hull v. Burr*, 234 U. S. 712, 720, and *Norton v. Whiteside*, 239 U. S. 144, that militate against the jurisdiction of this court herein.

The record clearly shows that from the arraignment of appellant throughout his trial he repeatedly and consistently invoked the protection that was his under the Constitution of the United States.

Respondent argues that "the criminal procedure adopted by a state is a matter of its own concern *so long as it does not deny fundamental rights guaranteed by the Federal Constitution*". (Unprinted Record, p. 118.) (Emphasis ours.) True, but here those fundamental rights have been violated by a so-called procedural statute which effectively deprives appellant, and all those who rely upon a weakened mental condition and the lack of that sound mind and discretion requisite as an ingredient of criminal responsibility as either a defense or in mitigation, of such defense.

> "Clearly, if the statute be unconstitutional, as claimed, the petitioner is unlawfully held, and should be discharged."
>
> *Dreyer v. Pease,* 88 Fed. 978.

Discussing a refused instruction in *People v. Landman,* 103 Cal. 577, the court said:

> "When a specific intent is an element of the offense, no presumption of law can ever arise that will decide this question of intent."

That the jury has a right to consider the existence of mental weakness as a mitigating circumstance, has always been the law in California. It is a substantive right—a fundamental right bearing directly on the question of intent.

People v. Perry, 195 Cal. 623;
People v. Reid, 193 Cal. 491.

Nevertheless, the so-called procedural sections herein attacked, deprive an accused of the opportunity to present the evidence so that the jury can exercise its discretion prior to finding him guilty.

It is submitted that from the record on file herein, the unconstitutionality of the sections under discussion is clear. They invade the rights of all accused persons who desire to plead mental weakness as affecting the question of intent. The jurisdiction of this court is clear.

Dated, San Francisco, California,
October 22, 1941.

Respectfully submitted,
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